

ALEJANDRO ORTIZ
Claimant

NIES CONSTRUCTION, INC.
Respondent

NORTHWESTERN NATIONAL INS. CO.
Insurance Carrier

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

The claimant requests review of the ALJ's decision. He alleges his request for treatment to his thoracic spine "is still related to the original injury of February 2001" and was an area of the body for which he previously received treatment.²

² Claimant's Brief at 1 (filed Jan. 10. 2006).

Respondent argues that claimant's injury was judicially found to have been to the left shoulder only. In essence, by making this request for treatment to his thoracic spine, respondent maintains claimant is attempting to re-litigate his claim in an attempt to once again establish that his spine was involved in his accident.

The only issue to be decided by this appeal is whether claimant is entitled to additional medical care for his compensable injury to his left shoulder that occurred in 2001.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board makes the following findings of fact and conclusions of law:

The ALJ set forth the history of this claim in significant detail and the Board adopts it as its own. The ALJ succinctly set forth his conclusions and reasoning as follows:

Claimant suffered injuries to his left shoulder and adjacent musculature as a result of lifting activities in 2001. Claimant complains of persistent complaints since the date of injury. There has been no change in the severity or nature of his symptoms. He now seeks additional treatment in an effort to force the employer to acknowledge that his injuries were to his neck, [and] not [just] his shoulder. No additional treatment is recommended for the shoulder. As it was judicially determined that [c]laimant's injuries were limited to his shoulder, he may not now seek treatment for his thoracic spine.³

The Board finds no reason to disturb the ALJ's findings and conclusions. Claimant's injury was determined to have left him with a left shoulder impairment. The Board's written Order indicated that claimant's original diagnosis included left scapular strain and myofascial pain.⁴ Although claimant alleged an injury to his neck and thoracic spine, both the ALJ and the Board rejected that assertion and his claim was limited to the left shoulder.

In connection with this post-award medical treatment request and his ongoing complaints of pain to the thoracic area, claimant was referred to Dr. John Estivo for an independent medical evaluation. According to Dr. Estivo, claimant was complaining of pain along the medial side of the left scapula at the thoracic spine region. Following his examination, he concluded "[t]he left shoulder is completely normal on examination, so I do not think his left shoulder has anything to do with this injury."⁵ He went on to

³ ALJ PAM Award (Dec. 15, 2005) at 5.

⁴ Board Order (Sept. 26, 2003) at 2

⁵ Dr. Estivo's IME report (July 22, 2005) at 3.

recommend that claimant have a MRI “to determine whether there is anything abnormal within the thoracic spine itself.”⁶

The ALJ concluded that the recommendations made by Dr. Estivo were for thoracic complaints, not the left shoulder or musculature. And as such, claimant was not entitled to the treatment. The Board agrees and affirms the ALJ. Claimant is entitled to future medical treatment that is “reasonably necessary to cure and relieve the employee from the effects of the injury.”⁷ It has already been judicially determined that his compensable injury was to his left shoulder and not to the neck or spine. And based upon the original Award he is entitled to future treatment for “left scapular strain and myofascial pain”. But his current complaints and the suggested diagnostic test is to the thoracic area. Thus, he is not entitled to the medical treatment he now seeks.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post-Award Medical Award of Administrative Law Judge Bruce E. Moore dated December 15, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Terry J. Torline, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁶ *Id.*

⁷ K.S.A. 44-510h.